

INTERIM STUDY PROPOSAL 2019-171

State of Arkansas
92nd General Assembly
Second Extraordinary Session, 2020

A Bill

JMB/JMB
HOUSE BILL

By: Representatives Sullivan, Gonzales

Filed with: House Committee on Public Health, Welfare, and Labor
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO PROVIDE FOR OPPORTUNITIES FOR PATIENT
CHOICE AND PROMOTE QUALITY OF CARE AS A REQUIREMENT
FOR LICENSURE AND CERTIFICATION AS A PROVIDER OF
EARLY INTERVENTION DAY TREATMENT SERVICES TO CHILDREN
AND NONRESIDENTIAL SERVICES TO ADULTS WITH
DEVELOPMENTAL DISABILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR OPPORTUNITIES FOR PATIENT
CHOICE AND PROMOTE QUALITY OF CARE AS A
REQUIREMENT FOR LICENSURE AND
CERTIFICATION OF CERTAIN PROVIDERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

(a) The General Assembly finds that:

(1) Arkansas Constitution, Article 2, § 19, embodies the
fundamental value of the citizens of Arkansas by eschewing monopolies which
maximizes resources, options, and opportunities;

(2) All patients deserve a choice when selecting a provider of
healthcare services;

(3) Patient choice in selecting healthcare providers can result
in improved quality and health outcomes;

(4) The Federal Trade Commission has found that competition in

1 healthcare markets benefits consumers as the competition helps contain costs,
2 improve quality, and encourage innovation;

3 (5) The job of the Federal Trade Commission is to stop firms
4 from engaging in anticompetitive conduct that harms consumers;

5 (6)(A) Communities, especially underserved communities,
6 recognize the value to their own prosperity and economic development by
7 encouraging businesses to locate in their communities and actively recruiting
8 and frequently incentivizing rather than limiting the number of businesses
9 locating in their communities.

10 (B) The businesses described in subdivision (a)(6)(A) of
11 this section include without limitation:

- 12 (i) Grocery stores;
- 13 (ii) Banks;
- 14 (iii) Restaurants;
- 15 (iv) Hardware stores;
- 16 (v) Automotive repair shops;
- 17 (vi) New and used car dealers;
- 18 (vii) Day care facilities; and
- 19 (viii) Other businesses;

20 (7) Buying, selling, transferring, expanding, relocating, and
21 other entrepreneurial activities are critical to economic development and the
22 life of communities, especially underserved communities;

23 (8)(A) Underserved communities actively recruit and frequently
24 incentivize any healthcare provider and do not limit the number of healthcare
25 providers that may open new businesses or relocate, buy, sell, transfer, or
26 expand existing businesses in their communities.

27 (B) The healthcare providers described in subdivision
28 (a)(8)(A) of this section include with limitation:

- 29 (i) Advanced practice registered nurses;
- 30 (ii) Audiologists;
- 31 (iii) Certified orthotists;
- 32 (iv) Chiropractors;
- 33 (v) Dentists;
- 34 (vi) Hospice care;
- 35 (vii) Hospitals;
- 36 (viii) Licensed ambulatory surgery centers;

- 1 (ix) Licensed certified social workers;
- 2 (x) Licensed dieticians;
- 3 (xi) Licensed durable medical equipment providers;
- 4 (xii) Licensed professional counselors;
- 5 (xiii) Licensed psychological examiners;
- 6 (xiv) Occupational therapists;
- 7 (xv) Optometrists;
- 8 (xvi) Pharmacists;
- 9 (xvii) Physical therapists;
- 10 (xviii) Physicians and surgeons;
- 11 (xix) Podiatrists;
- 12 (xx) Prosthetists;
- 13 (xxi) Psychologists;
- 14 (xxii) Respiratory therapists; and
- 15 (xxiii) Speech pathologists;

16 (9) The laws and rules that promote patient choice, quality of
17 care, and participation by any provider minimize the impact of inequitable
18 lobbying and the potential for legislative conflicts of interest in the
19 legislative process; and

20 (10) It is important to promote the public health by reducing
21 limitations on the delivery of healthcare services to the citizens of
22 Arkansas.

23 (b) It is the intent of the General Assembly to:

24 (1) Reduce limitations on the delivery of healthcare services
25 related to child health management services and developmental day treatment
26 clinic services for children, or any successor program providing early
27 intervention day treatment services to children, and for new entities or
28 persons seeking to be providers of these services;

29 (2) Reduce limitations on the delivery of nonresidential
30 services to adults with developmental disabilities and for new entities or
31 persons seeking to be providers of these services; and

32 (3) Address the underserved status of a county as a requirement
33 for licensure and certification as a provider of:

34 (A) Child health management services and developmental day
35 treatment clinic services for children, or any successor program providing
36 early intervention day treatment services to children; and

1 (B) Nonresidential services to adults with developmental
2 disabilities.

3
4 SECTION 2. Arkansas Code § 20-48-105 is repealed.

5 ~~20-48-105. Nonprofit community programs — Expansion of services.~~

6 ~~(a)(1) The intent of this section is to avoid unnecessary duplication~~
7 ~~of costs and services in the expansion of nonresidential services to adults~~
8 ~~with developmental disabilities.~~

9 ~~(2) A designation by the Division of Developmental Disabilities~~
10 ~~Services of the Department of Human Services that a county is underserved~~
11 ~~with regard to a specific category of nonresidential services to adults with~~
12 ~~developmental disabilities establishes that an expansion of nonresidential~~
13 ~~services to adults with developmental disabilities in the underserved county~~
14 ~~is necessary.~~

15 ~~(b)(1) The division shall not issue a new license for operation of a~~
16 ~~nonprofit community program or approve an application from a nonprofit~~
17 ~~community program to implement additional nonresidential services to benefit~~
18 ~~adults with developmental disabilities that are not currently offered by the~~
19 ~~nonprofit community program unless the division has determined that:~~

20 ~~(A) The county in which the program seeks to operate is~~
21 ~~underserved with regard to a specific category of nonresidential services~~
22 ~~currently offered to adults with developmental disabilities and currently~~
23 ~~funded from available state or federal funds; or~~

24 ~~(B)(i) The county in which the program seeks to operate is~~
25 ~~underserved with regard to new services not currently available to adults~~
26 ~~with developmental disabilities and the new services should be made available~~
27 ~~to benefit adults with developmental disabilities.~~

28 ~~(ii) State or federal funds are available in amounts~~
29 ~~necessary to support the delivery of new services not currently available to~~
30 ~~adults with developmental disabilities.~~

31 ~~(2)(A) The division shall provide written notice by certified~~
32 ~~mail of its designation under subdivision (b)(1) of this section to all~~
33 ~~nonprofit community programs with existing operations in the county~~
34 ~~designated by the division as underserved.~~

35 ~~(B) If nonprofit community programs with existing~~
36 ~~operations in the county that do not currently offer the specific category of~~

1 ~~nonresidential services identified by the division as underserved determine~~
2 ~~not to expand the identified nonresidential service to adults with~~
3 ~~developmental disabilities in the underserved county, the division shall~~
4 ~~provide written notice by certified mail of its designation under subdivision~~
5 ~~(b)(1) of this section to all nonprofit community programs in the remainder~~
6 ~~of the state.~~

7 ~~(C) If all nonprofit community programs in the remainder~~
8 ~~of the state determine not to expand the identified nonresidential service to~~
9 ~~adults with developmental disabilities in the underserved county, the~~
10 ~~division shall provide notice to the general public in a newspaper of~~
11 ~~statewide general circulation.~~

12 ~~(c) In granting an approval under this section, the division shall~~
13 ~~give approval in the following order of preference:~~

14 ~~(1) A qualified nonprofit community program with existing~~
15 ~~operations in the county that does not currently offer the specific category~~
16 ~~of nonresidential services to adults with developmental disabilities~~
17 ~~identified by the division as underserved;~~

18 ~~(2) A qualified nonprofit community program from another county~~
19 ~~in the state;~~

20 ~~(3) An accredited nonprofit entity in the underserved county;~~

21 ~~(4) An accredited nonprofit entity from another county in the~~
22 ~~state; and~~

23 ~~(5) An accredited nonprofit entity from outside the state.~~

24 ~~(d)(1)(A) A license from the division is required for operation of a~~
25 ~~nonprofit community program.~~

26 ~~(B) A qualified nonprofit community program is required to~~
27 ~~apply to and obtain the approval of the division to implement additional~~
28 ~~nonresidential services to adults with developmental disabilities that are~~
29 ~~not currently offered by the qualified nonprofit community program.~~

30 ~~(2)(A) If an application is approved, the division shall issue a~~
31 ~~new license or service expansion approval if it finds that the proposed~~
32 ~~nonresidential service expansion meets the criteria for approval established~~
33 ~~by the division.~~

34 ~~(B) If the application is denied, the division shall send~~
35 ~~written notice of the denial to the applicant that sets forth the criteria~~
36 ~~that the proposed nonresidential service expansion failed to meet.~~

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2 SECTION 3. Arkansas Code §§ 20-48-1104 – 20-48-1106 are repealed.

3 ~~20-48-1104. Determination of underserved status for expansion of~~
4 ~~services.~~

5 ~~(a) An expansion of early intervention day treatment services in a~~
6 ~~county is necessary when the Division of Developmental Disabilities Services~~
7 ~~of the Department of Human Services determines that a county is underserved~~
8 ~~with regard to:~~

9 ~~(1) Early intervention day treatment services; or~~

10 ~~(2) A specific category of early intervention day treatment~~
11 ~~services currently offered to children with developmental disabilities or~~
12 ~~delays.~~

13 ~~(b) As a condition of the issuance of a new certification to operate a~~
14 ~~child health management services program, a new license to operate a~~
15 ~~developmental day treatment clinic services program for children, or a new~~
16 ~~certification or license for a successor program, the division must determine~~
17 ~~that a county of the state is underserved in accordance with subsection (a)~~
18 ~~of this section.~~

19 ~~(c)(1) The division shall have sixty (60) days from the date of an~~
20 ~~application for expansion of early intervention day treatment services in~~
21 ~~which to determine whether a county is underserved under subsection (a) of~~
22 ~~this section.~~

23 ~~(2)(A) The division shall provide the applicant with a written~~
24 ~~report of its findings and conclusions by certified mail.~~

25 ~~(B) The division shall provide a copy of the report to the~~
26 ~~appropriate licensing or certification authority of the applicant.~~

27 ~~(3) If the division determines that the county is not~~
28 ~~underserved under subsection (a) of this section, the applicant shall have~~
29 ~~thirty (30) days from the date of the applicant's receipt of the written~~
30 ~~report in which to appeal the determination to the Office of Appeals and~~
31 ~~Hearings of the Department of Human Services under the Arkansas~~
32 ~~Administrative Procedure Act, § 25-15-201 et seq.~~

33
34 ~~20-48-1105. Order of priority for granting approval.~~

35 ~~(a) When considering an application for approval under this subchapter~~
36 ~~for expansion of early intervention day treatment services, including child~~

1 ~~health management services, developmental day treatment clinic services for~~
2 ~~children, or any successor program services, the Division of Developmental~~
3 ~~Disabilities Services of the Department of Human Services shall give approval~~
4 ~~in the following order of preference:~~

5 ~~(1) A certified child health management services, a licensed~~
6 ~~developmental day treatment clinic services for children, or a successor~~
7 ~~program with existing operations in the county identified by the division as~~
8 ~~underserved;~~

9 ~~(2) A certified child health management services program, a~~
10 ~~licensed developmental day treatment clinic services for children, or a~~
11 ~~successor program from another county in the state;~~

12 ~~(3) An accredited entity in the underserved county;~~

13 ~~(4) An accredited entity from another county in the state; and~~

14 ~~(5) An accredited entity from outside the state.~~

15 ~~(b) The division shall not require accreditation of the following~~
16 ~~entities in order to approve the entity's application for expansion of early~~
17 ~~intervention day treatment services under this subchapter:~~

18 ~~(1) A certified child health management services program with~~
19 ~~existing operations on July 1, 2013;~~

20 ~~(2) A licensed nonprofit community program providing~~
21 ~~developmental day treatment services for children with existing operations on~~
22 ~~July 1, 2013;~~

23 ~~(3) A successor program that was a certified child health~~
24 ~~management services program with existing operations on July 1, 2013; or~~

25 ~~(4) A successor program that was a licensed nonprofit community~~
26 ~~program providing developmental day treatment services for children with~~
27 ~~existing operations on July 1, 2013.~~

28
29 ~~20-48-1106. Notice of underserved area.~~

30 ~~(a) The Division of Developmental Disabilities Services of the~~
31 ~~Department of Human Services shall provide written notice by certified mail~~
32 ~~of its designation under § 20-48-1104 to all child health management services~~
33 ~~programs, developmental day treatment clinic services programs for children,~~
34 ~~and successor programs with existing operations in the county designated by~~
35 ~~the division as underserved.~~

1 ~~(b) If all child health management services programs, developmental~~
2 ~~day treatment clinic services programs for children, and successor programs~~
3 ~~with existing operations in the county designated by the division as~~
4 ~~underserved determine not to expand early intervention day treatment~~
5 ~~services, including child health management services, developmental day~~
6 ~~treatment clinic services for children, or successor program services in the~~
7 ~~underserved county, the division shall provide written notice by certified~~
8 ~~mail of its designation under § 20-48-1104 to all providers of child health~~
9 ~~management services, developmental day treatment clinic services for~~
10 ~~children, and any successor program services in the remainder of the state.~~

11 ~~(c) If all child health management services programs, developmental~~
12 ~~day treatment clinic services programs for children, and successor programs~~
13 ~~in the remainder of the state determine not to expand early intervention day~~
14 ~~treatment services, including child health management services, developmental~~
15 ~~day treatment clinic services for children, or successor program services in~~
16 ~~the underserved county, the division shall provide notice to the general~~
17 ~~public in a newspaper of statewide general circulation.~~

18
19 SECTION 4. Arkansas Code Title 20, Chapter 48, Subchapter 1, is
20 amended to add an additional section to read as follows:

21 20-48-106. Rules for certain facilities and services.

22 (a) The Division of Developmental Disabilities Services of the
23 Department of Human Services shall promulgate rules that promote
24 opportunities for patient choice and improved quality of care regarding
25 standards of operations and for the creation of newly formed business,
26 closure, sale, transfer, or expansion of the facility of or services provided
27 by a provider of:

28 (1) Child health management services and developmental day
29 treatment clinic services for children, or any successor program providing
30 early intervention day treatment services to children; or

31 (2) Nonresidential services to adults with developmental
32 disabilities, including adult developmental day treatment providers.

33 (b) The division shall not promulgate rules that discriminate against
34 any provider that meets the terms, conditions, or standards, or a combination
35 thereof, for participation as a provider.

1 SECTION 5. DO NOT CODIFY. Adoption of rules.

2 (a) When adopting the initial rules to implement this section, the
3 final rule shall be filed with the Secretary of State for adoption under §
4 25-15-204(f):

5 (1) On or before August 15, 2021; or

6 (2) If approval under § 10-3-309 has not occurred by August 1,
7 2021, as soon as practicable after approval under § 10-3-309.

8 (b) The division shall file the proposed rule with the Legislative
9 Council under § 10-3-309(c) sufficiently in advance of August 15, 2021, so
10 that the Legislative Council may consider the rule for approval before August
11 15, 2021.

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14 Referred by Representative Gonzales

15 Prepared by: JMB/JMB
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